

MARK S. CARTER
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Attorney Self Represented

MICHAEL D'ANTONIO, PRO SE		UNITED STATES DISTRICT COURT
		:DISTRICT OF NEW JERSEY
		:CIVIL ACTION NO. 16-CV-00816 (CCC)
		: (JBC)
Plaintiff	:	
	:	
v.	:	
BOROUGH OF ALLENDALE, STILES	:	
THOMAS, JOHN ALBOHN, DAVID	:	
BOLE, DAVID PFUND, MARY	:	
MCDONNELL, RICHARD EPSTEIN,	:	
THOMAS MONAHAN, MARK CARTER,	:	NOTICE OF MOTION TO DISMISS
LOUIS CAPAZZI, PASSAIC RIVER	:	WITH PREJUDICE PURSUANT TO
COALITION, BERGEN COUNTY	:	F.R.C.P. 12(b)(6)
SHERIFF'S DEPT.	:	
	:	
Defendants	:	
	:	

PLEASE TAKE NOTICE that upon the annexed declaration of
Mark S. Carter, Esq., Attorney Self Represented, shall move before
the Honorable Claire C. Cecchi, U.S.D.J., at the United States
Courthouse for the District of New Jersey, Martin Luther King
Federal Bldg. and U.S. Courthouse, 50 Walnut Street, Newark,
New Jersey 07102, for an order pursuant to F.R.C.P. 12(b)(c)
dismissing plaintiff's amended complaint **with prejudice** for failure to
state a cause of action and further relief as the Court deems
proper in the circumstances. Oral argument is requested if this

motion is opposed and if approved by the Court.

PLEASE TAKE FURTHER NOTICE that the return date is calculated to be on January 2, 2018 at 10:00 a.m. or any date thereafter set by the court; the date the opposition is calculated to be is on or before December 19, 2017 the date the reply, if any, is calculated to be December 26, 2017 and courtesy copies will be sent via regular mail U.S. mail to the Judge.

PLEASE TAKE FURTHER NOTICE that the undersigned shall rely upon the letter brief, certification of counsel and certification of service attached hereto in support of said application. A proposed form of order is attached hereto.

Dated: November 28, 2017



MARK S. CARTER, ESQ.
ATTORNEY SELF REPRESENTED

MARK S. CARTER
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UNITED STATES DISTRICT COURT

MICHAEL D'ANTONIO, PRO SE : DISTRICT OF NEW JERSEY
: CIVIL ACTION NO. 16-CV-00816 (CCC)
: (JBC)

Plaintiff :
:
v. :
BOROUGH OF ALLENDALE, STILES :
THOMAS, JOHN ALBOHN, DAVID :
BOLE, DAVID PFUND, MARY :
MCDONNELL, RICHARD EPSTEIN, :
THOMAS MONAHAN, MARK CARTER, :
LOUIS CAPAZZI, PASSAIC RIVER :
COALITION, BERGEN COUNTY : CERTIFICATION IN SUPPORT OF
SHERIFF'S DEPT. : MOTION TO DISMISS WITH PREJUDICE

Defendants :
:

MARK S. CARTER, ESQ., of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and and am self represented in this matter. I make this certification in support of the within application to dismiss all complaints filed by the Plaintiff against me.

2. I incorporate all documents filed or to be filed by all defendants in support of their applications to dismiss the revised amended complaint and all complaints against **with prejudice** pursuant to F.R.C.P 12(b) (6) .

3. The revised amended complaint has no basis in fact or in law and is totally meritless. The plaintiff seeks damages against all defendants for his inability to execute on a default judgment that I represented him on regarding a parcel of land that had been sold 2 years prior in which he was not a party. The prior filed complaints filed by the Plaintiff Self Represented also have no basis alleging violations of civil rights and other claims. The original complaint was dismissed without prejudice for failure to state a cause of action. Plaintiff filed an amended complaint self represented with no real substantive changes. The revised amended complaint filed through counsel does not state a cause of action against me.

4. The plaintiff never joined as a party in the prior state action to stay or stop that action and now seeks damages. His revised amended complaint is not only meritless, but illogical and absurd.

5. The plaintiff attempts to use the federal court when all of his previous state court actions have been dismissed and is under a court order from the Assignment Judge of Bergen County to submit all future lawsuits there for review and approval.

6. On February 21, 2017, this court entered an order dismissing Plaintiff's complaint against all defendants without prejudice and granting leave to file an amended complaint. A copy of the opinion and order is attached hereto.

7. In order to avoid a jurisdictional issue, Plaintiff then filed a self represented amended complaint against me alleging civil rights violations as to the First, Fourth, Fifth, Seventh and

Fourteenth Amendments to the United States Constitution. I am not employed with any governmental branch whether on a federal, state, county or local level at the time I represented the Plaintiff nor am I at the present time. I am an attorney in private practice for over 30 years.

8. I, along with the other defendants, filed motions to dismiss the Plaintiff's self-represented amended complaint. While the motions were pending, Plaintiff retained counsel who sought leave to file a revised amended complaint. Leave was granted and the court administratively dismissed all pending motions to dismiss.

9. The revised amended complaint asserts two (2) causes of action. The first count alleges violations of 42 USC Sec. 3601-3614, 42 USC Sec. 1983 and the 14th Amendment to the United States Constitution. The time frame where these alleged allegations occurred appear to be from 1997 to 2014. I did not represent the Plaintiff during the aforementioned time frame regarding the incidents and issues raised therein. More importantly, I am NOT mentioned at all in the First Cause of Action. Accordingly, the First Cause of Action must be dismissed with prejudice as the Plaintiff in the revised amended complaint prepared by counsel fails to cure any deficiencies raised by the court in the February 21, 2017 order.

10. The Second Cause of Action alleges violations of the 14th Amendment, the Fair Housing Act, and the Civil Rights Act of 1964. The Second Cause of Action appears to encompass the same time period, but seeks damages for alleged willful misconduct. Again, I am not named in the Second Cause of Action in any capacity. Accordingly, the

Second Cause of Action must be dismissed with prejudice as the Plaintiff as the revised amended complaint prepared by counsel fails to cure any deficiencies raised by the court in the February 21, 2017 order.

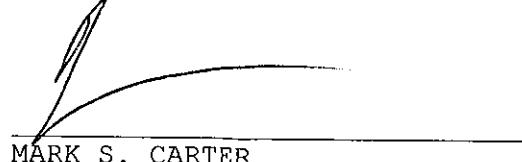
11. I am only mentioned by name in the introductory paragraph of the revised amended complaint. There is nothing asserted against me. It is the other defendants who allegedly committed wrongdoing. There are no other causes of action asserted against me. Plaintiff now has had three (3) attempts to assert a claim against me and has failed on all counts. Plaintiff has had every opportunity to assert a claim and even after retaining counsel filing a revised complaint, has failed to state a cause of action against me.

12. I represented the Plaintiff primarily on an appeal from a summary judgment order entered in the Superior Court, Law Division, Bergen County, which dismissed his complaint. On appeal, the Appellate Division affirmed the entry of the summary judgment order dismissing his complaint.

13. For all of the foregoing reasons, it is respectfully requested that the revised amended complaint against said defendant be dismissed **with prejudice**.

I certify that the foregoing statements made by me are true. I further certify that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 28, 2017



MARK S. CARTER

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MICHAEL A. D'ANTONIO,

Plaintiff,

v.

BOROUGH OF ALLENDALE, et al.,

Defendants.

Civil Action No.: 16-cv-816

ORDER

CECCHI, District Judge.

This matter comes before the Court on several motions to dismiss made by the following Defendants: Passaic River Coalition (“PRC”) (ECF No. 22); David Bole (“Bole”), the Borough of Allendale (“the Borough”), Mary McDonnell (“McDonnell”), David Pfund (“Pfund”), and Stiles Thomas (“Thomas,” together, the “Borough Defendants”) (ECF No. 33); Mark S. Carter (“Carter”) (ECF No. 34); Richard Epstein (“Epstein”) (ECF No. 36); John Albohm (“Albohm”) (ECF No. 39); and the Bergen County Sheriff’s Department (“Sheriff’s Department”) (ECF No. 47); as well as pro se Plaintiff Michael A. D’Antonio’s (“Plaintiff”) motion for default judgment against Defendants Louis Capazzi (“Capazzi”) and Thomas P. Monahan, Esq. (“Monahan”) (ECF No. 63), and Plaintiff’s appeal (ECF No. 74) of Magistrate Judge Clark’s November 18, 2016, Order (ECF No. 73). For the reasons stated in the corresponding Opinion,

IT IS, on this 21 day of February, 2017,

ORDERED that Defendants’ motions are **GRANTED**; it is further

ORDERED that Plaintiff’s motion and appeal are **DENIED**; it is further

ORDERED that the Complaint is **DISMISSED** without prejudice; and it is further

ORDERED that Plaintiff is granted 30 days from the date of this order to file an amended complaint to address the pleading deficiencies described herein, and, if the amended complaint asserts any claims against Defendants Capazzi, Monahan, and PRC, Plaintiff is granted 60 days from the date of this Opinion to effect proper service on these Defendants.

SO ORDERED.



CLAIRE C. CECCHI, U.S.D.J.

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UNITED STATES DISTRICT COURT	
MICHAEL D'ANTONIO, PRO SE	: DISTRICT OF NEW JERSEY
	: CIVIL ACTION NO. 16-CV-00816 (CCC)
	: (JBC)
Plaintiff	:
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v.	:
BOROUGH OF ALLENDALE, STILES	:
THOMAS, JOHN ALBOHN, DAVID	:
BOLE, DAVID PFUND, MARY	:
MCDONNELL, RICHARD EPSTEIN,	:
THOMAS MONAHAN, MARK CARTER,	:
LOUIS CAPAZZI, PASSAIC RIVER	:
COALITION, BERGEN COUNTY	: ORDER DISMISSING AMENDED COMPLAINT
SHERIFF'S DEPT.	: AND REVISED AMENDED COMPLAINT WITH
	: PREJUDICE
Defendants	:
	:

THIS MATTER having been opened to the court by Mark S. Carter, Esq., Attorney Self Represented, upon application to dismiss the amended revised amended complaints with prejudice pursuant to F.R.C.P. 12(b) (6), and the court having considered the papers submitted in support of and in opposition to the within application, and good cause shown:

IT IS on this _____ day of _____, 2018:

ORDERED that plaintiff's amended and revised amended complaints against Defendant, Mark S. Carter, Esq. dismissed WITH PREJUDICE pursuant to F.R.C.P.12(b) (6), and it is further

ORDERED that all claims asserted against defendant, Mark S. Carter, Esq. are dismissed with prejudice.

HON. CLAIRE C. CECCHI, U.S.D.J.



Mark S. Carter

Attorney at Law

November 28, 2017

Honorable Claire C. Cecchi, U.S.D.J.
United States Courthouse
Martin Luther King Building
50 Walnut Street
Newark, NJ 07101

Re: D'Antonio v. Borough of
Allendale, et als.
Civil Action No. 2:2016-
cv-00816 (CCC) (JBC)

Dear Judge Cecchi:

Please be advised that the undersigned is self represented in the above matter. Kindly accept this letter brief in support of my motion to dismiss the Plaintiff's amended complaint and revised amended complaint **with prejudice** pursuant to F.R.C.P. 12(b) (6).

I incorporate into the within letter brief all documents and pleadings filed or to be filed by all defendants seeking to dismiss the amended complaint with prejudice for failing to state a cause of action. The remaining defendants have filed motions to dismiss with prejudice all pending before Your Honor.

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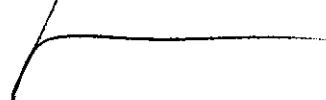
HONORABLE CLAIRE C. CECCHI, U.S.D.J.
PAGE 2

In his amended and revised amended complaint, he alleges that I violated his civil rights under the First, Fourth, Fifth, Seventh and Fourteenth Amendments of the United States Constitution. Essentially, plaintiff is bringing an action under 42 U.S.C. Sec. 1983. He has failed to allege or state where I acted under color of state law. Instead, he inarticulately alleges certain acts in various state court actions that have been dismissed some of which he was not a party to nor has standing to assert. His amended complaint fails to cure the deficiencies in his original complaint which was dismissed by Your Honor. In his revised amended complaint, there are two (2) causes of action asserted, neither mentions me by name.

Plaintiff repeats and re-alleges the same meritless and baseless claims. He also argues that Rooker Feldman doctrine applies to him (ECF 109 at p.11). More importantly, attorneys, acting in their professional capacity (as I was here), do not incur liability under 42 U.S.C. Sec. 1983, Tunheim v. Bowman, 366 F. Supp. 1395 (DC Nev. 1973). There is only a single count in the amended complaint and same alleges violation of Plaintiff's civil rights. As stated, the revised amended complaint filed through counsel fails to mention me by name and asserts no cause of action against me.

For all of the foregoing reasons, I respectfully request that my motion to dismiss with prejudice be granted.

Respectfully submitted,


Mark S. Carter

CERTIFICATION OF SERVICE

MARK S. CARTER, ESQ., of full age, hereby certifies as follows:

1. I am attorney at law of the State of New Jersey and am self-represented in this matter.
2. On November 28, 2017, I caused to be served via the Electronic Filing System (EFS), a copy of my reply letter brief to Plaintiff's Cross Motion upon all parties and/or counsel listed in the EFS.

I certify that the foregoing statements made by me are true. I further certify that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 28, 2017



MARK S. CARTER